



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-99-228-53195 Office: Vermont Service Center

Date:

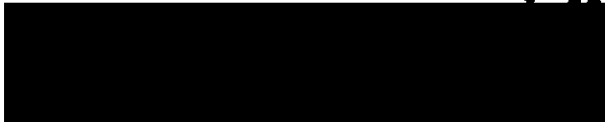
DEC 11 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John C. Mulrean

John C. Mulrean, Acting Director
Administrative Appeals Office

Classifying data serves to
prevent clearly unwarranted
disclosure of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a head jisha. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation or that the beneficiary had been engaged in a religious occupation during the two-year period prior to filing. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m) (2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated July 7, 1999, the petitioner stated that the beneficiary "was selected to [his] position because of his maturity and dedication to our mission. He is directly involved with the planning of our scheduled liturgy as well as other liturgical events we perform for the congregation." On March 4, 2000, the director requested that the petitioner submit additional information. In response, the petitioner listed the duties of the head jisha as follows:

The main function of the Jisha is to ensure that all liturgical functions proceed smoothly . . . Wake up at 4:30 am and prepare the Meditation Hall . . . Turn on lights, align meditation cushions, specify where non-residents (guest, visitors) should sit, check windows and set the thermostat . . . the Jisha lights the altar candle and incense, and also beats the drum . . . The Jisha makes the seating arrangement for breakfast (and all the meals) and is also a meal-server . . . The Jisha's task is to prepare the meeting room for the meeting . . . Cleans out the incense burners . . . replenish[es] any burnt out candles, incense, replac[es] flowers and chang[es] the water . . . Provides instruction on the liturgy, deportment in the meditation hall and Dharma hall, and answers questions on the meaning of our scriptures.

The petitioner submitted a photocopy of a certificate of ordination awarded to the beneficiary on June 3, 1995.

On appeal, the petitioner argues that only ordained monks may perform the duties to be performed by the beneficiary. The evidence submitted in support of this petition does not establish that the prospective occupation is a religious occupation. The petitioner claims that only ordained monks may perform the duties to be performed by the beneficiary; however, the petitioner has not provided any description of what was required of the beneficiary prior to his receipt of a certificate of ordination. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978). Moreover, it is not clear why only ordained monks would be capable of turning on lights, arranging cushions, replacing candles and incense, and setting thermostats. Working in a religious environment is not indicative of performing a religious occupation. Accordingly, the petitioner has failed to meet the requirements at 8 C.F.R. 204.5(m)(2).

The next issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on July 26, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from July 26, 1997 to July 26, 1999.

In a letter dated July 7, 1999, the petitioner stated that "since [the beneficiary's] arrival in August, 1994, [he] has been given different assignments to familiarize him with our various liturgical procedures." On March 4, 2000, the director requested that the petitioner submit additional evidence. In response, the petitioner stated that since July 1997 the beneficiary had worked as an assistant jisha, a jikijitsu, a head jisha, and a shikaryo. The petitioner submitted photocopies of 1997, 1998, and 1999 Forms W-2 issued by it to the beneficiary. On appeal, the petitioner asserts that the beneficiary has worked throughout the two-year period prior to filing. As was previously established, the duties performed by the beneficiary as a head jisha cannot be considered qualifying duties under the regulations. As such, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from July 26, 1997 to July 26, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that the beneficiary will receive a monthly salary of \$150.00 plus room and board. On March 4, 2000, the director requested that the petitioner submit additional evidence. In response, the petitioner submitted a photocopy of its 1998 Form 990-EZ, Return of Organization Exempt from Income Tax. According to this return, the petitioner did not have any revenue or expenses that year. The petitioner also submitted a financial statement for the year ended December 31, 1998. This statement was not audited. On appeal, the petitioner and its accountant assert that the petitioner has the ability to pay the beneficiary's salary. The petitioner submits a financial statement for 1999. This statement was not audited. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides

a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.